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HAND-DELIVERED

Michael Veit
Contracts and Purchasing Administrator
Arizona Health Care Cost Containment System
Contracts and Purchasing Section (First Floor)
701 East Jefferson, MD5700
Phoenix, Arizona 85034

**Protest of Award of Acute Care Services - Pima County (GSA 10)
(Solicitation Number YH09-0001)**

Dear Mr. Veit:

This law firm represents Southwest Catholic Health Network Corporation, doing business as Mercy Care Plan ("Mercy Care" or "MCP") and, on behalf of Mercy Care, files this protest. Arizona Health Care Cost Containment Systems ("AHCCCS") recently decided not to award an Acute Care Services contract to Mercy Care in Pima County. Mercy Plan protests this decision on the basis that AHCCCS committed numerous errors in scoring and evaluating Mercy Care's Proposal. As detailed below, had Mercy Care's Proposal been scored correctly, Mercy Care would have finished with a final score of 70.51. A score of 70.51 would have effectively tied for the third highest score in Pima County, meriting award of one of the four Acute Care Services contracts awarded in that county.

As required by Arizona Administrative Code ("A.C.C.") R2-7-A901(B), Mercy Care provides the following information:

Interested Party: Southwest Catholic Health Network Corporation
dba Mercy Care Plan
4350 E. Cotton Center Blvd., Bldg-D
Phoenix, Arizona 85040
(602) 453-8365

Purchasing Agency: AHCCCS

Bid Solicitation Number: YH09-0001

Relief Requested: Award of an Acute Care Services Contract for Pima County

All additional information required by A.C.C. R2-7-A901(B), including a detailed statement of the legal and factual grounds of the protest, follows.¹ Copies of all relevant documents are included as an appendix to this letter.

I. AHCCCS IMPROPERLY SCORED MERCY CARE'S PROPOSAL

The Acute RFP Scoring Team members (the "Scoring Team") failed to adequately consider the Proposal in a comprehensive manner. As detailed below, for several Evaluation Criteria the Scoring Team did not award Mercy Care points, allegedly because Mercy Care failed to include particular information in the Proposal. However, in many of these cases, the required information was, in fact, contained in the Proposal, often within a few paragraphs or pages of the portion of the Proposal that the Scoring Team was reviewing. The Scoring Team's failure to consider the Proposal comprehensively resulted in numerous errors as the Scoring Team scored each individual criterion.

Fortunately, the Scoring Team's review of the Proposal is well documented in the Response Scores binders, and Mercy Care believes the errors can be corrected. In the "Point-By-Point Analysis of Scoring Errors" section of this letter, we detail a number of the scoring errors committed as the Scoring Team evaluated Mercy Care's Proposal against the Evaluation Criteria. If appropriate points are awarded to correct these scoring

¹ This protest is timely under A.C.C. R2-7-A901(D). Mercy Care was first granted access to the procurement file on May 14, 2008.

errors, Mercy Care's score would be 70.51, effectively placing them in a tie for the third highest score in Pima County.²

Mercy Care wishes to note that in calling attention to these scoring errors, it does not mean to disparage the work of the Scoring Team. Mercy Care appreciates the difficulties associated with evaluating a Proposal against several hundred Evaluation Criteria. Nonetheless, these errors need to be corrected.

II. POINT-BY-POINT ANALYSIS OF SCORING ERRORS

In this section of letter, Mercy Care identifies the Evaluation Criteria the Scoring Team mis-scored. Each title (in bold) identifies the "Category" and "Component" being scored. Each table identifies the Submission Number, Evaluation Criteria, and the Comments and Clarification/Consensus generated by the Scoring Team during their review. Following each table, under the heading, "Mercy Care's Protest of the Scoring Error," Mercy Care explains the nature of the scoring error.

Organization - Organization and Staffing

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
3-2 & 3-3	<p>2. The Offeror provides ongoing (refresher) training on the following: AHCCCS requirements, Cultural Competency, Fraud and Abuse</p> <p>3. The Offeror provides initial and ongoing job specific training on contract requirements and state and federal requirements.</p>	<p>3.2 Ongoing Training did not address AHCCCS requirement or Fraud & Abuse</p> <p>3.3 Ongoing job training & additional training did not address job specific training on contract requirements and state & federal requirements.</p>	<p>3.2 & 3.3. Comments: Criteria found under initial training. Syllabus list information for "new" employees nothing mentioned under "ongoing" or "additional training."</p>

² We developed a statistical methodology to replicate AHCCCS' weights. We recognize that our weighting will not be an exact match, but it allows for a reasonable estimation of final score.

Mercy Care's Protest of the Scoring Error: Above all else, it should be noted that in AHCCCS' operational and financial review for contract year ending 2007, AHCCCS found Mercy Care to be in full compliance in the following areas: (i) educating employees on fraud and abuse, (ii) training and educating on compliance across all levels of Mercy Care, and (iii) training for all staff members on AHCCCS program guidelines. [Proposal, p. 293]

The Scoring Team's Clarification/Consensus indicates they did not award points for this criteria because there was no mention of "ongoing" training. This is mistaken. Language in the Proposal specifically mentions ongoing training programs. For instance on page 295, the Proposal reads, "**Ongoing training** needs are determined by trends in operations, frequent questions from staff members, feedback from managers and new requirements/procedures/policies." [(emphasis added)]

Additionally, the syllabi, included as part of our response to this question, reference course objectives that include knowledge of all AHCCCS programs and fraud prevention. [See for example, Proposal, p. 307] Notwithstanding the course objectives referenced in the syllabi, the Scoring Team indicated points were withheld because the syllabi only referenced training for "new" employees. In this sense, the Scoring Team reads the word "new" too literally. "New" not only refers to new employees, but to employees that are promoted or reassigned and in need of additional training. For example, consider the syllabi at page 307 of the Proposal. An existing employee who is promoted or newly assigned as a Member Service Representative would undergo "new" Member Service Representative training, which includes training regarding fraud and AHCCCS programs. Hence, Mercy Plan's fraud and AHCCCS training is "on-going" and offers additional training to employees as their changing scope of employment so warrants. As illustrated by many of the other syllabi attached as part of the Proposal, as employees advance to positions dealing with fraud prevention and governmental compliance, they receive the requisite on-going training.

In addition to the training courses described above, Mercy Care also conducts ongoing training by disseminating electronic memoranda allowing Mercy Care staff to receive updates to policies and processes on a daily basis. [Proposal, p. 295]

Given the Proposal's robust discussion of criteria 3-2 and 3-3, the Scoring Team's failure to award points constitutes a scoring error which should be corrected.

Organization - Organization and Staffing

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
7-1	Other than encounter (partial encounter/data validation) sanctions, no past or current sanctions since January 1, 2005. 3 points.	7-1. Mercy Care received a sanction of \$200,000 for concerns related to their grievance system.	Comments: On page 339 the Offer listed a \$200,000 sanction by AHCCCS for grievance system issues.

Mercy Care's Protest of the Scoring Error: AHCCCS levied this sanction against Mercy Care four days prior to the bid submission due date. Mercy Care has appealed this sanction and this appeal is still pending. As such, the sanction should not be part of the bid review.

Organization - Information Systems

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
10-1 & 10-2	10. When was the last IT-specific external operational audit or external performance review of the Offeror's system/division? Provide the contact information for the external organization if applicable.	Offeror mentioned that a SAS 70 audit was completed, but there was not indication that SAS 70 includes a comprehensive IT audit. More definition would have been required to award points.	[None]

Mercy Care's Protest of the Scoring Error: The Scoring Team's comment regarding the "comprehensiveness" of Mercy Care's IT audit is at odds with the

Evaluation Criteria. A comprehensive IT audit is not required. Mercy Care's recent audit tested the "Operating Effectiveness for Claims Processing Controls and Related General Computer Controls of the Phoenix Service Center" [Proposal, p. 354], which describes the audit in sufficient detail to merit award of points under the criteria.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
13-2	2. The submission identifies the use of a remittance advice that specifies reasons for denial or partial payment.	"No mention of Remittance advice in the Offeror's response." (emphasis added)	Team reviewed submission & information pertaining to provider feedback & data analysis not remittance advice.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes the information required to meet criterion 13-2. The Offeror Reference field on the Acute RFP Evaluation Tool worksheet for Category 13 indicates that the Scoring Team only considered **pages 361-366** of the Proposal when it evaluated criterion 13-2. However, use of remittance advice for denial or partial payment was discussed on **pages 368-69** of Mercy Care's Proposal.

For example, quoting the Proposal on page 368, "[i]f the member was not eligible on the date of service, the system will automatically deny the claim using the appropriate Health Insurance Portability and Accountability Act (HIPAA) **approved remittance comment**. (emphasis added) Furthermore, page 368 of the Proposal continues, "[t]he claim line will deny with the appropriate HIPAA **remittance remark** on the EOB." (emphasis added) Additionally, on page 369 of the Proposal, "**[i]f a provider bills a code that has terminated, the system will deny the claim line and advise the provider the code is invalid.**" (emphasis added)

The Scoring Team was mistaken when it observed that Mercy Care made "no mention" of "remittance" in the Proposal. Had the Scoring Team considered pages 368-69, they would have awarded Mercy Care a point under this criterion.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
14-4	The submission included monitoring of the corrective action plan (monitoring to include testing/evaluation of the CAP).	14-4. Offeror discussed CAP implementation, however at no point mentioned evaluation & further monitoring of CAP to see if issue was fixed.	14-4. Offeror discussed implementing corrective action plans but did not evaluate the CAP in place.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes the information needed to meet criterion 14-4. The Scoring Team's Comment that the Proposal fails to mention monitoring of the CAP is mistaken. The Proposal establishes a corrective action plan [CAP], the "claims issue management process." [Proposal, p. 367] This process is monitored by a "Claims Issue Management team," a multi-disciplinary team and subcommittee which "*monitors and manages* of [sic] our claims issue management activities." [p. 367 (emphasis added)] It is clear that Mercy Plan has a process in place to monitor, test, and evaluate its corrective action plans and that this committee accomplishes this expressed purpose. Failure by the Scoring Team to award Mercy Plan a point for this criterion constitutes a scoring error which should be corrected.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
14-6	6. The submission included a process that included correcting encounters that were found to be impacted by those deficiencies.	14-6. No mention of resubmitting/correcting encounters.	Comments: 14-6. Offeror re-priced and repaid claims but did not address correcting and resubmitting encounters.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes the information necessary to satisfy criterion 14-6. The Clarification Consensus Comments note that Mercy Care was denied a point because it did not address "resubmitting encounters." However, "resubmitting encounters" is not part of the Evaluation Criteria. In fact, the Recommendation on the Assumptions worksheet for Submission number 14.6 notes that, "we [AHCCCS] are looking for **identification** of adjudicated encounters which must be replaced and/or voided as a result of audit findings and/or corrections." [(emphasis added)] Thus, if the Proposal addresses "identification," the Proposal should satisfy the criterion.

The Proposal itself speaks to the precise issue of identification at page 375, under the heading "Data Reporting/Analysis." To summarize the Proposal language, the "Summary Transfer Validation Reports" compare all paid-claim counts and confirm that all files are successfully transferred to an Encounter Management System. At this stage, "[d]iscrepancies can be **identified**, researched, and resolved," and verification received that all adjudicated encounters are accounted for. [p. 375] In other words, Mercy Plan has a procedure in place to **identify** adjudicated encounters and this procedure is found in the Proposal.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
15-2c	2.c. Data Accuracy	Offeror's response did not address key elements.	Offeror stated "adjudicated" claims process; however they did not specifically discuss the criteria in c, d, e, and g.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes the information needed to meet criterion 15-2c. The Scoring Team's Acute RFP Evaluation Tool worksheet indicates that the Scoring Team considered only page 365 of the Proposal in evaluating this criterion. However, Mercy Care discussed Data Accuracy in sufficient detail on pages 361, 369, and 375 of the Proposal. Had the Scoring Team considered these pages of the Proposal, it undoubtedly would have awarded a point under this criterion.

Turning to the Proposal itself, at page 361, the Proposal notes that, “claims are received from clearinghouses daily, processed with pre-import edits to ensure HIPAA compliance and *data validity*... .” [(emphasis added)] Additionally, at page 369, the Proposal notes, Claim edit rules are set to *validate the claim* against the provider, member, dates of service, services rendered and units authorized...If a provider bills a code that has terminated, the system will deny the claim line and advise the provider the code is invalid.” Finally, as explained on page 375, “[t]he QNXT™ system verifies that all necessary claims fields are populated with values of the appropriate range and type,” providing Mercy Care an additional layer of data accuracy.

The Proposal’s discussion of Data Accuracy is sufficient to warrant award of a point for criterion 15-2c. The Scoring Team’s failure to consider pages 361, 369, and 375 of the Proposal in its scoring of the criterion constitutes error.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
15-2d	2.d. Adherence to AHCCCS Policy.	Offeror’s response did not address key elements.	Comments: Offeror stated “adjudicated” claims process; however they did not specifically discuss the criteria in c, d, e, and g.

Mercy Care’s Protest of the Scoring Error: Mercy Care’s Proposal includes information necessary for criterion 15-2d. Mercy Plan’s Proposal discusses adherence to AHCCCS policy at page 368 under the heading “Use of iHealth Technologies to Detect Questionable Billing Practices.” As stated in the Proposal, “Professional claims that reach an adjudicated status of PAY are automatically reviewed against nationally recognized standards such as the Correct Coding Initiative (CCI) *as well as Medical Policy requirements and maximum unit requirements supplied by AHCCCS.*” [p. 368 (emphasis added)] Because Mercy Care’s Proposal expressly discusses their adherence to this criterion, they should be awarded one point under 15-2d.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
15-2e	2.e. Provider Qualifications.	Offeror's response did not address key elements.	Comments: Offeror stated "adjudicated" claims process; however they did not specifically discuss the criteria in c, d, e, and g.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal addresses the key elements of criterion 15-2e. The Proposal discusses Provider Qualifications at page 368 of the Proposal and reads, "the QNXT™ system is configured by specialty to allow certain procedures to only be performed by *selected provider types*. For example, the system does not permit a claim for heart surgery performed in-office by a Podiatrist to be processed. In addition to the QNXT™ system, *iHealth also reviews claim lines which are set to pay for provider billing appropriateness by specialty.*" [p. 368 (emphasis added)] In other words, during the claims process, Mercy Care tailors its provider qualification screening by provider type and specialty area. This practice is sufficient to warrant award of a point under 15-2e, and the failure of the Scoring Team to award a point constitutes a scoring error.

Organization - Claims

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
15-2g	2.g. Over Utilization standards.	Offeror's response did not address key elements.	Comments: Offeror stated "adjudicated" claims process; however they did not specifically discuss the criteria in c, d, e, and g.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal addresses the elements of criterion 15-2g. The over utilization standards adopted by Mercy Care are

nationally recognized and conform to the maximum unit requirements supplied by AHCCCS. Mercy Care's use of edits to prevent over utilization is evidenced at page 368 of the Proposal, "[w]ithin our QNXT™ claims system, these edits include but are not limited to reviews for: ... 3) *excessive or unusual services for age or gender* ... Professional claims that reach an adjudicated status of PAY are automatically reviewed against *nationally recognized standards* such as the Correct Coding Initiative (CCI) as well as Medical Policy *requirements and maximum unit requirements supplied by AHCCCS.*" [(emphasis added)] Failure to award Mercy Care one point under Evaluation Criteria 2.g. is clear error. Even though the term "Over Utilization" may not be used by the Proposal in the passage quoted above, "Over Utilization" is certainly what is being described.

Organization - Encounters

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
18-1	1. All services rendered (including those in the prior period) will be submitted as encounters to AHCCCS.	Reviewer could not find reference to the key criteria in Offeror's response.	[None]

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes the information needed to meet criterion 18-1. The Scoring Team noted that they did not award Mercy Care a point on this criterion primarily because there was no reference to submittal of encounters to AHCCCS. This is mistaken. At page 375 of the Proposal, under the heading "Encounters," the Proposal reads, "Mercy Care Plan (MCP) understands that the success of the AHCCCS program depends heavily on the accurate and timely *submission of encounter data*. We use a combination of a custom, internally developed Encounter Management System (EMS) and highly-skilled, extensively-trained Encounter Unit (EU) employees *to submit encounter data that are clean, complete, and submitted timely.*" [(emphasis added)]

On the same page, the Proposal goes on to explain that EMS acts as a repository for all encounters; hence, via EMS, Mercy Care submits *all* appropriate encounters to AHCCCS.

Organization - Encounters

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
18-10 & 18-11	<p>10. Offeror's Staff utilizes a management report that reconciles the claims system to the encounter system that includes financial fields.</p> <p>11. The timeliness of encounter submissions is tracked in aggregate.</p>	Reviewer could not find reference to the key criteria in Offeror's response.	<p>10. The Offeror compares paid claim counts in one system to another but not to encounters that include financial fields.</p> <p>11. Offeror list reports of "aging" or existing encounters but not the timeliness of encounter submissions.</p>

Mercy Care's Protest of the Scoring Error: In this case, the Scoring Team did not apply the Assumption and Recommendation for Submission Numbers 18-10 and 18-11. According to the 18-10 and 18-11 Assumptions worksheet, mention of a "ESTR management" report is sufficient to meet the Evaluation Criteria here. Mercy Care's Proposal specifically mentions creating "**Encounter Tracking Reports**" to meet the needs of AHCCCS. [p. 375 (emphasis added)] Accordingly, Mercy Care should be awarded points under criteria 18-10 and 18-11.

Organization – Member Services

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
19-1	1. Member Grievances are monitored for resolution.	The Offeror appears to track grievances & obtain reports; however they did not indicate that grievances are monitored to ensure resolution.	1. Offeror monitors general timeliness of grievances, not resolution.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes sufficient detail concerning "monitoring for resolution" for award of a point under criterion 19-1. As discussed in the Proposal, all grievances are monitored to ensure resolution. In fact, upon intake of all service related grievances, "[i]f an immediate resolution is not possible, the member is verbally informed that additional research is necessary and is given an expected resolution date. This information is documented in the Grievance Management database for *monitoring of the resolution time*" provides quality control through the grievance process in order to ensure resolution. [Proposal, p. 378 (emphasis added)] The Scoring Team appears to have mistakenly overlooked the Proposal's description of monitoring grievances to resolution. In any case, the Scoring Team erred when it failed to award Mercy Care a point under this criterion.

Organization - Member Services

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
19-2	2. The Offeror resolves member Grievances within 90 days.	Grievances are resolved for clinical/quality issues within 90 days, but response does not address timeliness of the rest of the grievances.	2. Offeror stated only clinical/quality grievances monitored for 90 day timeliness.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal includes the information needed to meet criterion 19-2. Although the Proposal does not explicitly state that service grievances are resolved within 90 days, the Proposal does note that in CYE 07, Mercy Care response to 97% of service grievances within an average of .06 and 18.66 days. [p. 378] Of course, the implication is that nearly all service grievances are in fact resolved within 90 days.

Organization - Member Services

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
19-3	3. There is a process that monitors resolution timelines when complaints are referred to other departments.	Offeror refers to [sic] grievances to other departments when appropriate, but did not state they are monitored for timeliness.	3. Offeror appropriately refers grievances to another department, but does not monitor for timeliness.

Mercy Care's Protest of the Scoring Error: Mercy Care's Proposal states that grievances are monitored for timeliness and should have been awarded one point under criterion 19-3. As detailed in the Proposal, the Member Services Department monitors all "member grievance information for timeliness" [pp. 378-79], including grievances that are transferred to the Quality Management department. In any case, all transferred grievances are answered "in writing as soon as possible but in no more than 90 days from receipt." [Proposal, p. 378]

Organization - Member Services

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
21-4	4. Members are notified how to obtain translation services and that they are paid for by the Offeror using methods other than a member handbook or website.	Offeror did not state that translation services are at no cost to member.	Offeror did not state that translation services are at no cost to member.

Mercy Care's Protest of the Scoring Error: The Scoring Team withheld one point under Evaluation Criterion 21-4 claiming that the Proposal does not state that translation services were at "no cost to members." The Scoring Team is mistaken. The Acute RFP Evaluation Tool worksheet indicates that the Scoring Team was looking only at page 383 of the Proposal for this information; however, this information is found on page 382. Page 382 of the Proposal reads, "MCP provides an interactive Language Line Interpreter Services with over-the-phone interpreters in 170 languages, seven days-a-week, 24 hours-a-day **at no cost to members** or providers." [(emphasis added)] Mercy Care clearly documented the source of payment for translation services and should be awarded a point under criterion 21-4.

Organization - Grievance System

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
23-1.a.,b., & c.	<p>1. Did the Offeror's description include flowcharts and written descriptions for grievances including:</p> <p>a. when, where and how to file</p> <p>b. resolution requirements, including timelines in accordance with AHCCCS rules</p> <p>c. response requirements.</p>	<p>The Offeror did not describe when & specifically address where to send grievances. Timeframe addresses resolution no more than 90 days only for clinical quality grievances.</p>	<p>The Offeror stated members are educated through written materials on the grievance system, but did not address "how, when or where" to file a grievance.</p>

Mercy Care's Protest of the Scoring Error: The Scoring Team's criticism focuses on the fact the Proposal fails to address, "how, when or where" one may file a grievance within Mercy Care's grievance process. The Proposal acknowledges that grievances enter its member services department by "**telephone, letter, or e-mail.**" That statement, though broad, should be sufficient to satisfy the criteria. [p. 386 (emphasis added)]

Of course, the rationale behind the criteria is ensuring that Mercy Care can communicate to its members the "how, when and where" of its grievance process. The Proposal directly addresses this point at page 388, "[g]rievance education occurs at many points. Members are educated on our grievance system and any changes through written materials (e.g. member handbook, member newsletter), on our website and in member notifications (e.g., notice of action)." The information provided in the Proposal is sufficient to warrant an award of points under criteria 23a-c.

Program - Quality Management

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
3-4	4. Peer Review Committee includes local providers.	3-4. Peer Review Committee includes network providers, but it is not clear that they are local providers.	[None]

Mercy Care's Protest of the Scoring Error: All providers on the Mercy Plan Peer Review Committee are local providers in our network. The names of the Committee are included in the Proposal at page 290 and identified as network practitioners. Although the Proposal does not identify these providers as "local," they are, in fact, local providers. Accordingly, the concerns expressed in the Scoring Team's comment are unfounded, and the denial of a point under evaluation criterion 3-4 is a scoring error.

Program - Quality Management

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
4-2.d	2.d. Procedure for insuring confidentiality.	2.d. Procedure for insuring confidentiality is missing.	[None]

Mercy Care's Protest of the Scoring Error: As discussed on page 141 of the Proposal, all Mercy Care staff involved in these processes receive new hire training and annual refresher training and follow established policies and procedures including but not limited to "... ***maintaining member confidentiality***..." [(emphasis added)] The Scoring Team was mistaken to conclude that reference to Mercy Care's procedures concerning member confidentiality was "missing" from the Proposal.

Program - Quality Management

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
4-6	6. Quality of care data is included in the provider profile/file and considered during recredentialing process.	There is no indication that quality of care data is included in the provider file for consideration during the recredentialing process.	[None]

Mercy Care's Protest of the Scoring Error: The Proposal discusses this criterion on page 143 under the heading "Tracking and Trending and Ongoing Improvements." Under this heading, the Proposal explains how Quality of Care reports are tracked by provider and how Quality of Care reports are used during the recredentialing process. Additionally, the Proposal explains how Mercy Care relied upon its Quality of Care tracking process to evaluate a specific provider. The relevant portion of page 143 of the Proposal reads as follows:

The QM department prepares quarterly and annual QOC reports and peer review trend reports on cases that were closed during the reporting period and the member services department prepares similar trend reports for all member grievances received and resolved (service and QOC). These trend reports can be **organized according to provider**, issue category, referral source, number of verified issues, and closure levels. The CMO, the QM/UM Committee, SIC and QMOC review these reports which are used to provide background information on providers for whom there have been previous complaints, identify significant trends that warrant review by the Peer Review Executive Session of the QM/UM Committee, or identify the need for possible quality improvement initiatives. For example, a QOC investigation regarding late or no arrival of a provider responsible for transporting members to dialysis clinic appointments was referred to the SIC for discussion and resolution. The SIC

monitored the provider's transport timeliness, required corrective action and regularly scheduled meetings with the provider to discuss improvement progress. After an evaluation period, we elected to contract with another provider to exclusively provide transportation of MCP members to their dialysis appointment.

It appears that the Scoring Team did not award a point simply because the phrase "provider file" does not happen to appear on page 143 of the Proposal. However, the Proposal details how Quality of Care reports are tracked by provider, which can only mean the reports are sorted by provider. Accordingly, the Scoring Team committed a scoring error when it did not award a point under this criterion.

Program - Quality Management

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
6-1	1. Process for provisional, initial, and recredentialing described follows AMPM requirements (JCAHO or NCQA also acceptable). (Checklist?)	The Offeror does not list all of the requirements for credentialing such as past or present illegal drug use.	[None]

Mercy Care's Protest of the Scoring Error: The Evaluation Criterion does not require a complete listing of NCQA requirements. All that is required is that the process described in the Proposal follow NCQA requirements. Mercy Care explained that its processes comply with NCQA requirements. Page 147 of the Proposal clearly states, "These processes, which are part of our quality management (QM) program, are conducted in a fair and nondiscriminatory manner, and ***follow nationally recognized accreditation standards (NCQA)*** and all applicable AHCCCS and federal (CMS) standards. MCP ***received findings of full compliance for the AHCCCS*** operational and financial review standards related to credentialing in the areas of provisional

credentialing, monitoring and oversight of delegated entities and organizational provider processing *for the past three contract years.*" [(emphasis added)]

Program - Quality Management

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
10-1	1. If statistical significance is achieved in TWO consecutive years, award 3 points. If statistical significant is NOT achieved in two consecutive years, award 0 points.	The Offeror reported a statistical significance level of $p < .06$. Review of the data indicated a statistical significance level of $P = .065$. The value is incorrect and not properly reported.	[None]

Mercy Care's Protest of the Scoring Error: Mercy Care clearly demonstrated sustained improvement across three years for six indicators.

The Scoring Team noted that for one of the indicators presented, Mercy Care "reported a statistical significance level of $P < .06$," which the Scoring Team concluded was "incorrect and not properly reported." However, when applying the AHCCCS required p-value standard of .05, the potential discrepancy in the third decimal place of the p-value does not change the conclusion drawn, and this indicator still shows evidence of sustained improvement over three years. In conjunction with many other indicators that showed sustained improvement, the information presented clearly meets the AHCCCS requirements for this question.

Additionally, because different test statistics produce slightly different p-values, the reviewer's conclusion that the p-value is incorrect cannot be drawn without prior specification of the test-statistic required by AHCCCS to demonstrate statistical significance. The Scoring Team was mistaken when it concluded that Mercy Care's reported value of $P < .06$ was incorrect or improperly reported.

Program - EPSDT/MCH

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
3-2	2. Describes the State's AzEIP procedure for care coordination.	No mention of education or encouraging providers to coordinate care with AzEIP by advising of services rendered.	[None]

Mercy Care's Protest of the Scoring Error: Mercy Care clearly describes its processes to coordinate with AzEIP to identify children in need of services and to encourage providers to communicate to AzEIP results of assessments and services provided to AzEIP enrollees as evidenced by the response within the Proposal.

Pages 190-191 of the Proposal include a section specific to AzEIP and address Mercy Care's processes and protocols for our AzEIP eligible or enrolled members. Highlights of this portion of the Proposal include (with appropriate emphasis added):

MCP works with AzEIP and providers for outreach to AzEIP eligible members who have a developmental delay and coordination of their medically necessary EPSDT covered services. Within two business days of receipt of an AzEIP Individualized Family Service Plan (IFSP), MCP forwards the documentation to the member's PCP. Within 14 days, the PCP reviews the documentation to determine if the requested EPSDT services are medically necessary. If so, we authorize and send notification to the service provider and AzEIP...

Each month, MCP receives a file of MCP members who are potential AzEIP referrals from AHCCCS. ***We use this data to notify each member's PCP that their patient was referred to the AzEIP program and that PCP follow up with the parent/guardian may be needed.*** Effective October 2008,

MCP will supplement current materials given to providers with specific AzEIP program information and how PCP's can navigate AzEIP's service delivery system, as well as MCP's role and responsibilities in the coordination of medically necessary EPSDT services. *We will disseminate this information to providers during the EPSDT coordinator on-site visits...*

The coordinator provides written and verbal information about the AzEIP program at that time including AzEIP referral procedures and program contact information...

Our coordinator provides additional education if we discover that referral to AzEIP is not part of their procedures.

These passages specify exactly how Mercy Care encourages providers to coordinate care with AzEIP. Accordingly, Mercy Care should be awarded a point under this criterion.

Program - EPSDT/MCH

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
3-6	6. Has a comprehensive process for coordinating care for members with special health care needs, including oral health and behavioral health.	No mention of oral health in comprehensive care coordination process, even though mention of "working with" dental clinic for homeless to get current contract information, but did not discuss how care is coordinated for these members.	[None]

Mercy Care's Protest of the Scoring Error: Pages 191-192 of the Proposal addresses CRS and behavioral health needs children as well as Mercy Care's processes

and protocols for coordination of care for these members. As detailed in this section, Mercy Care has established a Special Needs unit within its QM department to assist in outreach and care coordination. The section offers a detailed explanation of “coordination” that is more than sufficient to satisfy criterion 3-6.

Program - Behavioral Health

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
1-1f.	1.f. Other	Offeror did not include an alternative mechanism to identify members with behavior health meds. Specifically, the health plan did not reference an outside agency, organization or entity.	[None]

Mercy Care’s Protest of the Scoring Error: According to the AHCCCS Assumption, the Scoring Team determined that to meet criteria for the “other” requirement, the Offeror must reference referrals from outside organizations, agencies, or entities in their submission. The Mercy Care Proposal, pages 211-212, shows referral sources from:

- HSA – provided by new MCP members
- NICU report – provided by hospitals
- AHCCCS and RBHA enrollment reports – provided by AHCCCS and RBHA

All of these referral sources are outside the Mercy Care organization and should have been considered by the Scoring Team when scoring this evaluation criterion.

Program - Medical Management

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
2-5	5. Ineffective interventions were modified or suspended when necessary.	The Offeror did not cite any ineffective interventions.	[None]

Mercy Care's Protest of the Scoring Error: The Scoring Team commented that the Proposal does not cite any ineffective interventions. This is mistaken. On pages 168-169, Mercy Care describes changes it made to its comprehensive preferred drug list as a result of monitoring conducted by its medical and pharmacy management staff. The following passage from page 169 of the Proposal illustrates an ineffective intervention (the removal of the prior authorization requirement for certain prescriptions) that was later modified (the step therapy program):

Typically, the first line standard of care for heartburn, gastroesophageal reflux disease (GERD) or ulcers is histamine2-receptor antagonist (H2RA). For many years MCP had required prior authorization for the use of proton pump inhibitors (PPIs) for heartburn, GERD or ulcers but after reviewing prior authorization requests ***we removed the prior authorization requirement*** as most requests were appropriate and being approved. ***After the requirement was removed, one particular PPI became the most highly utilized and costly drug, with H2RAs no longer being utilized as a first line standard of care.*** To manage the appropriate use of PPIs and minimize the prior authorization requirements for the provider, ***MCP put in place the following step therapy program:*** 1) member must have tried and failed a compliant regimen of standard dosages of H2RAs for two consecutive months, at which time they can automatically move to over the counter Prilosec; 2) if the member does not respond to a compliant regimen of Prilosec they can then move on to the

next preferred PPI, Protonix; and 3) exceptions to the process are allowed with documentation of member specific individual care needs or contraindications for medications in the first two steps. The PPIs now account for about 25 percent of the medications for heartburn, GERD or ulcers. [(emphasis added)]

The Scoring Team's failure to consider removal of the prior authorization requirement as an ineffective intervention resulted in a scoring error under this criterion.

Network - Provider Network Management & Development

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
8-2	2. Are changes made to the network to accommodate the needs of special populations?	8.2. No mention of changing network to accommodate special populations.	The Offeror's response does not specifically reference special needs or case management involvement in gap identification.

Mercy Care's Protest of the Scoring Error: Based on the page numbers listed in the Offeror Reference field of the Acute RFP Evaluation Tool worksheet, it is clear that the Scoring Team did not consider pages 67-68 of the Proposal when scoring this criterion. On pages 67-68 of the Proposal, Mercy Care details how it has contracted with providers in order to offer specialized services to special populations, including, among others, providers with expertise in caring for homeless members, members in border communities, and members with Acquired Immunosuppressant Deficiency Syndrome. Additionally, the Proposal states that "MCP has and continues to enhance the network for other special needs members." [page 68] Undoubtedly, had the Scoring Team considered pages 67-68 when scoring this criterion, it would have awarded Mercy Care a point.

Furthermore, the Proposal notes on page 106 that "[e]mployees also work informally to *resolve accessibility issues or network gaps* that require immediate intervention ... For example, employees from medical management, quality management,

or member services may identify gaps during routine activities. When this occurs, these employees work with our contract specialists to identify alternative contracted providers. If none are immediately available, medical management employees authorize and coordinate care to nonparticipating providers and report network needs to the network development/contracting department for follow-up.”

Given the description of Mercy Care’s efforts to serve special populations, as well as their efforts to resolve accessibility issues and network gaps, the Proposal adequately addresses this criterion, and the Scoring Team erred when it failed to award a point.

Network - Provider Network Management & Development

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
8-5e	General Claim inquiry/issues	8.5e. No mention of general claim inquiry	Offeror reference to provider complaint and claim dispute does not address informal general inquiry.

Mercy Care’s Protest of the Scoring Error: Receiving, documenting, trending, and development and monitoring of quality improvement initiatives related to claims inquiry is addressed on pages 102-105 of the Proposal.

Network - Provider Network Management & Development

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
8-6	The Offeror closes provider panels to assignment due to non compliance with Appointment standards.	No mention of panel closure.	8.6 Offeror reference to corrective action plans does not indicate the possible severity such as "up to or including termination or panel closures." No mention of member assignment.

Mercy Care's Protest of the Scoring Error: Page 107 of the Proposal addresses panel closure and termination. Page 107 reads, "[t]he chief medical officer (CMO) makes the final decision based upon committee recommendations, which may involve peer-to-peer contact with the provider, development of a corrective action plan, provider education, or *restrict member assignment* or referrals or *termination of the contract*." [(emphasis added)]

Network - Provider Network Management & Development

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
10-1e	1e. Are the interventions monitored for effectiveness, or for new bidders, is there a reasonable evaluation methodology.	No mention of evaluating for effectiveness.	Monitoring of intervention is not specifically referenced.

Mercy Care's Protest to the Scoring Error: The Scoring Team indicates that it withheld award of a point for this criterion because the Proposal fails to specifically reference intervention monitoring. The Scoring Team's assertion is not correct because

the Proposal makes specific reference to monitoring intervention activities. [Proposal, pp. 112-113] Most specifically, as stated on page 112 of the Proposal, Mercy Care uses feedback “to champion change at the individual provider level as well as system wide. The provider services department prepares reports of trended data from feedback sources and presents information to the SIC for review. The purpose of the SIC [Service Improvement Committee] is to identify issues that impact members and providers, ***recommend and approve intervention activities, assign action plans, and monitor plans to completion.***” [(emphasis added)] Given the Proposal’s specific reference, the Scoring Team erred when it failed to award a point under this criterion.

Network - Provider Network Management & Development

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
11-5	Analysis plan to identify trends in utilization such as emergency room utilization for members identified as no-shows by other provider types.	No mention of identifying trends in utilization for no-shows.	Reference to predictive pathways on page 115 notes those who are potential no-shows, not actual no-shows.

Mercy Care’s Protest to the Scoring Error: The Scoring Team stated two grounds for withholding a point under this criterion: (i) no mention of identifying trends in utilization for no-shows and (ii) no identification of trends in actual no-shows. For reasons explained below, both of these grounds are incorrect.

The Proposal does identify trends in utilization for “no shows” as evidenced at page 114 of the Proposal, which reads, “as part of our analysis, we also evaluated other characteristics that may influence failure to keep appointments, including behavioral health indicators, use of transportation and possible language barriers. Our analysis indicated that 22 percent of members that had a chronic no-show pattern also had a behavioral health indicator, compared to 12 percent of our entire membership. Further, 85 percent of the members identified with a pattern of chronic no-shows did not have a transportation encounter. It is possible that the large volume of Hispanic members

identified in the table above missed appointments as a result of limited English proficiency, since 34 percent of them indicated that Spanish is their language of choice; however, further research and analysis is needed before we can draw specific conclusions. These findings demonstrate that defining the root cause for why members fail to keep appointments will be a complicated and difficult task.” Once more, the data identified on page 114 arises from trends among “actual no-shows.” The grounds upon which the Scoring Team relied in withholding a point are incorrect.

Additionally, Mercy Care addressed this criterion on page 115 of the Proposal, which reads “[t]o further enhance our capability of identifying members we are going to use our proprietary Predictive Pathways™ to identify members at risk of being a chronic no-show member. At the time of this Proposal, we are testing characteristics, utilization patterns (under and over utilization) and demographics to use in the member selection process.” Of course, as noted above, the Scoring Team criticizes Mercy Care for analyzing “potential no-shows” as opposed to “actual no-shows,” but criticizing Mercy Care for analyzing “potential no-shows” (a future event) makes little sense. The Evaluation Criteria itself calls for an “Analysis plan,” and plans, by nature, are future looking. Mercy Care’s use of Predictive Pathways™ is a sound practice that is likely to lead to improved analysis of utilization trends in the future. For this additional reason, it is a scoring error to deny Mercy Care a point for Evaluation Criteria 11-5 because Mercy Care clearly has plans in place to analyze trends in utilization for no-shows.

Network - Provider Network Management & Development

Submission Number - Evaluation Criteria	Evaluation Criteria	Scoring Team Comments	Scoring Team Clarification/Consensus
11-7	7. An evaluation of the effectiveness of the interventions implemented and adjustments to the interventions that are found not to be effective.	11-5. No mention of making adjustments to ineffective interventions.	[None]

Mercy Care's Protest to the Scoring Error: The Scoring Team withheld a point under this criterion claiming that the Proposal does not mention adjusting ineffective interventions. The Scoring Team's assertion is mistaken. The Proposal mentions this precise criterion on pages 115-18 where it described its interventions and best practices at reducing no-shows. Most specifically, Mercy Plan identified an adjustment to an ineffective intervention as resulting in a change to its operating procedure. The Proposal details the adjustment noting that, "[i]nitially, our standard operating procedure was for providers to notify the member services department after the member missed three appointments in a six month period and then the member services department would reach out to members to determine the cause and provide education. ***However, in order to intervene earlier in the process, we changed our standing operating procedure*** to require providers of all types, to report when a member has missed two appointments in a six-month period so that we may intervene earlier with member outreach and education." [page 115 (emphasis added)] The bold-italicized text above illustrates an adjustment Mercy Care made to an ineffective intervention. Accordingly, Mercy Plan should be awarded a point for Evaluation Criterion 11-7.

III. CONCLUSION AND RELIEF REQUESTED

As detailed above, the Scoring Team committed numerous scoring errors during its review and analysis of Mercy Care's Proposal. For the sake of fairness and accuracy, Mercy Care protests these errors and calls for their correction.

The scoring errors, taken together, diminished Mercy Care's final score. As you know, Mercy Care's original final score in Pima County was 62.92. However, if the Scoring Team had not committed the scoring errors described above, Mercy Care estimates that it would have received a weighted score of approximately 70.51. A score of 70.51 would have placed Mercy Care in a near tie for third place in Pima County and would have undoubtedly resulted in the award of an Acute Care Services contract for the County. [Mercy Care has included in the appendix to this letter a spreadsheet detailing how it estimated the revised score of 70.51]

Moreover, even if only a portion of these protested items are substantiated, Mercy Care's final score would be very close to APIPA. We understand from the debriefing meeting that the "gap" in scores between APIPA and Mercy Care was the reason only four contracts, as opposed to five, were awarded in Pima County.

Given the closeness of the revised scores—even if not all items are sustained—there should be five contracts awarded in Pima County. Furthermore, given that Pima

Michael Veit
May 23, 2008
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County has effectively been served by five providers in the past (including APIPA, which operated on a capped basis), and the expected growth of Pima County, we believe that AHCCCS should award five contracts. Mercy Care Plan has served AHCCCS enrollees in Pima County for over twenty years. Under the circumstances described in this protest, the best interests of the State are best served if an award is made to Mercy Care so that AHCCCS avoids disrupting the care for nearly 40,000 AHCCCS enrollees in Pima County.

Had Mercy Care received a score of approximately 70.51, Mercy Care would have placed ahead of APIPA, and effectively tied for third with PHP, winning the bid. Accordingly, Mercy Care hereby requests that it be awarded an Acute Care Services contract for Pima County.

Very truly yours,

Charles A. Blanchard

CAB:asw

Enclosures

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